

REMARKS

The Office Action

Claim 13 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for depending from a non-elected claim. Claims 1-3, 5, 9-13, 19, 20-22, 31, 34, and 36 stand rejected as being anticipated by Brines (US2003/0104988). Claims 1-3, 11, 13, 19, 20, 22, 31, and 34 further stand rejected as being anticipated by Weiss et al. (WO99/21966). Claim 6 stands rejected as being obvious over Weiss or Brines in view of Bhaskaran (US2004/0136952). Each of these rejections is addressed in turn.

Support for the Amendments

Claim 1 has been amended to recite a method for promoting structural tissue regeneration of the liver after surgical liver resection in an individual having a benign or malignant liver tumor. Support for this amendment is found at paragraph [0055] of the published application. Claim 36 has been amended to recite a method for healing of burn wounds in an individual using a skin graft without the occurrence of scarring. Support for this amendment is found at paragraph [0185]. New claim 37 recites administering EPO, EMP, or NESF an amount of 100-150 IU/kg of body weight. Support for this claim is found at paragraph [0158]. Support for new claims 38-40 is found in original claims 3, 5, and 6. No new matter has been added.

Rejection Under 35 U.S.C. 112, Second Paragraph

Claim 13 stands rejected because it depends from claim 8, which is directed to a non-elected invention. Applicant has amended claim 13 to no longer depend from claim 8, and this rejection may now be withdrawn.

Rejections Under 35 U.S.C. §§ 102(b) and 102(e)

Claims 1-3, 5, 9-13, 19, 20-22, 31, 34, and 36 stand rejected as being anticipated by Brines. Claims 1-3, 11, 13, 19, 20, 22, 31, and 34 further stand rejected as being anticipated by Weiss. According to the Office, each of Brines and Weiss teaches the use of EPO to treat various injuries, diseases, and disorders. Without assenting to the Office's characterization of the teachings of these two references, Applicant addresses these rejects with respect to the amended claims.

The pending claims include two independent claims—claims 1 and 36. Amended claim 1 is directed to a method for promoting structural tissue regeneration of the liver after surgical liver resection in an individual having a benign or malignant liver tumor. Amended claim 36 is directed to a method for healing of burn wounds in an individual using a skin graft without the occurrence of scarring. Neither Brines nor Weiss teaches the use of EPO or any other compound for the purpose of promoting structural regeneration of the liver after surgical liver resection. Similarly, Brines and Weiss are also silent on the use of EPO in combination with a skin graft to heal burn wounds. Because Brines and Weiss fail to disclose every limitation of amended claims 1 and 36, the rejection of these two claims (and their dependent claims) should be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claim 6 stands rejected as being obvious over Brines or Weiss in view of Bhaskaran. The alleged teachings of Brines and Weiss, and the failure of these references to anticipate claim 1 (from which claim 6 depends), are discussed above. Bhaskaran is relied upon by the Office solely to teach an element of claim 6 that is not by either of the primary references: the use of a pegylated form of EPO. Bhaskaran does not remedy the deficiencies of Brines and Weiss, as it too fails to teach or suggest a method for promoting structural tissue regeneration of the liver after surgical liver resection in an individual having a benign or malignant liver tumor, as is required by claim 6.

Because no combination of the cited art teaches or suggests every limitation of claim 6, the rejection of this claim as being obvious should be withdrawn.


Conclusion

Applicant submits that the claims are in condition for allowance, and such action is respectfully requested. Transmitted herewith is a Petition to extend the period for replying to the Office action for three months, to and including July 7, 2009.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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